

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 10 1969

REPUBLIC NATIONAL LIFE INSURANCE
COMPANY,

Appellant,

v.

No. 22593

HAMILTON LIFE INSURANCE COMPANY OF
NEW YORK and FINANCIAL SECURITY
LIFE INSURANCE COMPANY,

Appellees.

APPELLANT'S SUPPLEMENTAL BRIEF
REGARDING JURISDICTION

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IN THE
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FOR THE NINTH CIRCUIT

REPUBLIC NATIONAL LIFE INSURANCE
COMPANY,

Appellant,

v.

HAMILTON LIFE INSURANCE COMPANY
OF NEW YORK and FINANCIAL SECURITY
LIFE INSURANCE COMPANY,

Appellees.

No. 22598

APPELLANT'S SUPPLEMENTAL BRIEF
REGARDING JURISDICTION

During the argument of this case on January 7, 1969, members of the Court requested supplemental memoranda to be submitted simultaneously by both counsel showing whether the requirements of federal jurisdiction exist.

The controversy, as stated in plaintiff's complaint, and amplified by the various exchanges of memoranda, briefs, and in argument, consists of two counts. The first is for declaratory judgment setting forth the respective rights and liabilities of Republic National, Hamilton and Financial Security as participating insurers in the reinsurance contract described in the complaint, including a declaration that Republic National is not liable as a reinsurer because of failure of consideration and fraud in the inception. In the alternative, it is requested that declaratory judgment be

entered determining the extent of respective liability of the three insurers for the total claim of \$347,529.26 of insurance claims allegedly made upon the subject insurance policies.

As stated in Republic National's brief, the dispute is essentially whether of the total claims, Republic National is liable for 80% (\$278,023.41), as claimed by Hamilton, or for 16% (\$55,604.68) as contended by Republic National, with the remaining 64% liability (\$222,418.73) to be borne by Financial Security.

In the second count of the complaint, Republic National alleges that by reason of its breach of contract Hamilton has damaged Republic National in the sum of \$60,000.00.

Declaratory judgment relief is requested under the jurisdiction conferred upon the Court by 28 U.S.C. § 2201. In order to obtain such a judicial construction of the parties' liability under an insurance contract, it is necessary for three elements of federal jurisdiction to co-exist. First, there must be diversity of citizenship. Second, there must be an actual controversy between the parties to the action. Third, the statutory minimum amount in controversy must be present. C. E. Carnes & Co. v. Employers' Liability Assurance Corp., C.C.A.5 1939, 101 F.2d 739, 741. Each of these requirements exists in the present action as demonstrated below.

It is well settled that an action by an insurer to establish the extent of its liability is an actual controversy sufficient to vest jurisdiction in the Court. Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 57 S.Ct. 461,

81 L.Ed. 617 (1937). There, the Supreme Court stated that the character of the controversy and of the issue to be determined is essentially the same whether it is presented by the insured or by the insurer. "It is the nature of the controversy, not the method of its presentation or the particular party who presents it, that is determinative." Aetna Life Insurance Co. v. Haworth, supra, 244, 465.

Interpreting the Aetna Life Insurance Co. v. Haworth case, the Court of Appeals for the Eighth Circuit stated:

"That decision holds in effect that where under an insurance policy the insured has a right of action against the insurer, the insurer has a corresponding right to maintain a suit under the Declaratory Judgment Act to secure a judgment determining the obligations and liabilities of the parties." Aetna Life Insurance Co. v. Williams, C.C.A. 8 1937, 88 F.2d 929, 930.

Likewise, in a suit to construe liability under group insurance contracts, it has been held that when those insured by the policy are asserting liability of the company and the company is denying liability claiming the policy is terminated, the suit involves a real and substantial controversy for determination by declaratory judgment. Anderson v. Aetna Life Insurance Co., C.C.A.4 1937, 89 F.2d 345, 347.

Therefore, applying these standards to the present case, where Republic National has been presented with insurance claims totalling \$278,023.41 which it denies it owes, or at most owes only partially, and has instituted an action against its coinsurers for a determination of their respective liabilities, the requirement for an actual justiciable

controversy has been satisfied.

The next question is whether the allegations of Republic National's complaint show the minimum jurisdictional amount in controversy of \$10,000.00 required by 28 U.S.C. § 1332. In making this determination, the allegations of the complaint are to be taken as stating the amount in controversy, unless it appears to a legal certainty that the claim is really for less than the jurisdictional amount. Horton v. Liberty Mutual Insurance Co., 367 U.S. 348, 81 S.Ct. 1570, 1573 (1961). No party has questioned the good faith of Republic National's allegations in its complaint.

Taking the most conservative view of the complaint, that the amount in controversy is the difference between the maximum amount claimed by Hamilton and the maximum liability foreseen by Republic National, the resulting differential is \$222,418.73. This is in accord with the standard for fixing jurisdictional amounts stated in Davis v. American Foundry Equipment Co., C.C.A.7 1938, 94 F.2d 441. There it was stated that the jurisdictional amount in contract cases for declaratory judgment is to be determined by the amount which it is sought to have declared free from doubt, that is the difference between what plaintiff and defendant each claim is due and owing. By this standard, the \$10,000.00 minimum has been amply satisfied in this instance, whether under this standard the amount in controversy is viewed as being \$347,529.26, \$278,023.41, or \$222,418.73.

It has also been stated that the jurisdictional amount

in controversy is established where there is an actual controversy over contractual rights, whether contingent or liquidated. Hardware Mutual Casualty Co. v. Schantz, C.C.A.5 1949, 178 F.2d 779.

There is no apparent concern over the diversity of the parties in this case. The Plaintiff, Republic National, is a Texas corporation, with its principal place of business at Dallas, Texas. The Defendants Hamilton and Financial Security are New York and Arizona corporations, respectively, neither of whom has alleged a principal place of business in Texas. Therefore, total diversity of citizenship exists.

CONCLUSION

The three requirements for the exercise of declaratory judgment jurisdiction are present in this case. An actual controversy exists to determine how the liability for \$347,529.26 is to be apportioned between the three insurers who are parties to this action, which should be determined by an action for declaratory relief.

Respectfully submitted,

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A copy of the foregoing Supplemental Brief has been served by mail this 13th day of January, 1969, upon Mr. John P. Frank of the firm of Lewis, Roca, Beauchamp & Linton, 114 West Adams Street, Phoenix, Arizona 85003, Attorneys for Appellees.

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